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S E C R E T SECTION 01 OF 03 NEW DELHI 002516

SIPDIS

DEPARTMENT OF ENERGY FOR RICH GOOREVICH

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SUBJECT: NSA NARAYANAN ON CIVIL NUCLEAR IMPLEMENTATION AND
INTELLIGENCE SHARING WITH AMBASSADOR ROEMER

REF: NEW DELHI 2357

Classified By: Ambassador Timothy Roemer for Reasons 1.4 (B) and (D).

11. (S) SUMMARY. Ambassador Roemer pressed National Security Advisor M.K. Narayanan in a telephone call December 16 for progress on civil nuclear implementation, assurances about the protection of sensitive information, and a commitment not to seek extradition in the Headley case. Narayanan remained optimistic that liability legislation could be passed in the current session of Parliament, which will likely adjourn December 21. He expected to have a reply "shortly" to Ambassador Roemer's December 4 letter seeking clarifications on two issues related to Part 810 assurances. On reprocessing consultations, he agreed that nuclear security was the most compelling argument in favor of multiple facilities, but offered nothing new on the issues of physical protection or compensation. He was most animated by the issue of suspension, suggesting that U.S. negotiators were attempting to re-open aspects of the 123 Agreement. Narayanan said he understood the importance of protecting sensitive information about the Headley case and dismissed media reports as "preposterous." Pressed for his commitment on behalf of the Indian government not to request Headley's extradition, Narayanan replied that it was "difficult not to be seen making the effort," but that the government was not seeking extradition "at this time." END SUMMARY.

Civil Nuclear Liability Legislation and Part 810 Assurances

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12. (C) In a telephone call December 16, Ambassador Roemer pressed National Security Advisor M.K. Narayanan on civil nuclear implementation and the Headley case. Ambassador Roemer reminded Narayanan of his earlier assurance that the government would act on liability legislation during the current session of Parliament, and requested an update. Narayanan said he remained optimistic that liability legislation could be passed in the current session, saying "we want to push it through" and that the government had until December 23 to do so. (NOTE: In a subsequent meeting reported septel, Parliament Speaker Meira Kumar told Ambassador Roemer that Parliament would adjourn December 21

and not reconvene until late February 2010. END NOTE.)

13. (C) Ambassador Roemer sought a response to his December 4 letter to Narayanan seeking clarifications on two issues related to Part 810 assurances, specifically their applicability to end users other than NPCIL and the relationship of the assurances to the 123 Agreement. Narayanan replied that he had passed the letter to the Department of Atomic Energy (DAE) and expected a response shortly. He asked for clarification on whether the requested end users apart from NPCIL were public sector entities, but offered no clarification on the government's view of the relationship between the assurances and the 123 Agreement. (COMMENT: The co-chairs of the USIBC civil nuclear trade mission told poloff they had learned that the government elected only to list NPCIL as an end user in the November 20 dipnote because it did not have in place a system to monitor whether private sector entities would honor the civil use and non-retransfer assurances. Until the government established such a system, it was uncomfortable giving government-to-government assurances required for Part 810 licenses for entities other than NPCIL. Post has received no official explanation, but this seems plausible. It also argues for proceeding with the issuance of Part 810 licenses for U.S. firms that would like to begin discussing with NPCIL -- including GE and Westinghouse -- rather than wait for government assurances regarding private sector end users. END COMMENT.)

Reprocessing Consultations: Suspension Most Significant Issue

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14. (C) Ambassador Roemer stressed that the United States wanted to bring the reprocessing negotiations to a conclusion as soon as possible. He conveyed that Under Secretary Burns would like to speak with Narayanan in the near future and suggested that another round of consultations might be premature until after the call. He shared his cautious optimism on the issue of multiple facilities, but stressed that we expect to face questions from Congress. Narayanan agreed that the most compelling argument in favor of multiple facilities was the nonproliferation benefit of avoiding the risk of transporting spent fuel across long distances, a theme that should resonate in the context of President Obama's initiative to host a Nuclear Security Summit. He added that were a third reactor park site to be designated for U.S. technology at some point in the future it would likely be in the southern part of the country and thereby require another facility. Ambassador Roemer welcomed the government's flexibility on physical protection conveyed during the Prime Minister's visit, but conveyed that as a legal matter we have "zero flexibility" on the issue of compensation because we cannot promise funds not appropriated and approved by Congress. Narayanan was in listening mode on both issues, but offered nothing new.

15. (C) Narayanan was most animated by the issue of suspension. He asked why the same standard in Article 14 of the 123 Agreement cannot apply to the reprocessing facility. He suggested that U.S. negotiators were using the reprocessing consultations as an opportunity to re-open issues that were settled in the 123 Agreement negotiations to advocate for positions that they had failed to achieve. Ambassador Roemer said we were looking carefully at the suspension language and that Under Secretary Burns would have more to say on the issue. (COMMENT: The language Narayanan used is reflected -- in some cases verbatim -- in a December 16 article in The Hindu entitled "Ghost of Tarapur Haunts Reprocessing Agreement with U.S." by Siddharth Varadarajan, a frequent outlet for high level leaks pertaining to civil nuclear cooperation. The article further elaborates the Indian perspective and has been sent by email to SCA/INSB and SCA/RA. END COMMENT.)

¶6. (S) Ambassador Roemer highlighted the unprecedented effort to share intelligence in the case of accused Lashkar-e-Tayyiba operative David Coleman Headley and conveyed that we were following up on questions and requests that arose from the information we had already provided in the case. He stressed that the Indian government's discretion in protecting this sensitive information was of critical importance, calling attention to recent media speculation containing details of the FBI briefing sourced to unnamed Indian government officials, which could compromise our ability to obtain further cooperation and information from Headley. Narayanan said he understood and dismissed the media reports as "preposterous."

¶7. (S) Ambassador Roemer sought Narayanan's commitment on behalf of the Indian government not request Headley's extradition. He explained that the threat of extradition to India could cause Headley's cooperation to dry up, but that allowing the U.S. judicial process to unfold or securing a plea agreement that both reflects his overall culpability and ensures his continued cooperation would maximize our ability to obtain further information from Headley. In any case, the extradition treaty's prohibition on an individual being extradited to face trial for the same conduct or offense might be an obstacle to extradition. Furthermore, if Headley were convicted, an extradition request by India would not be

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considered until his sentence in the United States was fully served, which could be decades, if ever. Narayanan replied that it was "difficult not to be seen making the effort," but that the government was not seeking extradition "at this time." Narayanan added that the Indian government would be "in the hot seat" if it were seen as pre-emptively relinquishing extradition.

ROEMER